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No. **02-1576**

Supreme Court, U.S.
FILED
JUL 7 2003
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

VERA NIGRO

Petitioner(s)

V.

U. S. FEDERAL LABOR
RELATIONS AUTHORITY

On Petition For Writ Of Certiorari
To The U.S. COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITIONER'S REPLY BRIEF

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REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I. THE CASE PRESENTS SIGNIFICANT UNRESOLVED AND CONSTITUTIONAL QUESTIONS AND CHALLENGES

We can not send in a detailed Reply Brief to oppose the Respondents (FLRA and Solicitor General) as we have not yet received their Opposition Brief . The Court informed us it was filed on 6/30/03. We hoped to receive the Respondent's document over the 4th of July Holiday weekend, but such has not been the case. We send in this Reply Brief to let the Court know we support our Petition for Writ of Certiorari, and send in additional information demonstrating help is needed to better rights for federal employees in this area. Our categories for response in this brief are generic and un-detailed, but will be completed upon the Respondents Opposition Brief being received. Please note they may also change.

A. THE RESPONDENT BASED ITS OPPOSITION ON ___

See statement in **I.** above this page (1).

B. THIS CASE IS NOT CONTROLLED BY _____

See statement in **I.** above this page (1).

II. THE COURT SHOULD GRANT THE PETITION TO RESOLVE THE SIGNIFICANT MATTERS RAISED

See statement in **I.** on page one of this Petitioner's Reply Brief.

CONCLUSION

See statement in **I.** on page one (1) of this Petitioner's Reply Brief.

We believe the Court should grant Petitioner's Petition for Writ of Certiorari as it raises significant constitutional challenges and important matters of a nationwide scope, to include challenges to the laws and procedures that govern FLRA personnel in the non-issuance of ULP's in federal employee cases. Currently many federal employees are deprived of basic adjudication rights.

We ask the Court to read the Appendix in this Reply Brief as it demonstrates the problems Petitioner raised in her Petition are national scope. The additional federal employee case sample is about a group of Houston based IRS employees, that used the FLRA Unfair Labor Practice (ULP) system only to find it gave them no relief, which then lead to an EEO lawsuit which is pending and continuing against both the Internal Revenue Service (IRS) and National Treasury Employees Union (NTEU). Their lawsuit is based on an EEOC Administrative Judge's finding that the IRS and NTEU colluded together to deprive the employees of arbitration hearings and appeal rights on many significant discrimination matters. See DICKERSON ET AL, **App.1 and Robinson DOL Exhibit 2 App 36**

Respectfully submitted,

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APPENDIX

DICKERSON-ROBINSON ET AL, CASE SAMPLE 5TH CIRCUIT 03-20050

ORAL ARGUMENT

The appellants are entitled to oral argument and execution of the Summary Judgment because of the Defendants'-Appellees' continued pattern and disregard for legal rights bestowed individuals by Congress and the Constitution. Appellants relied upon the Appellees to fairly prosecute Title VII employment discrimination under the internal grievance process, however they closed the case and mislead the Appellants to believe that the case was pending arbitration, as a pretext to the discriminatory act of denying arbitration on issues of employment discrimination. The Agency's attorney, Mr. Michael Salyards, states through his declaration, the Defendants-Appellees "recognizing the costs and hazards of proceeding to litigation on both the failure to prosecute issues and the merits," NTEU agrees to withdraw its claims regarding the merits. In exchange, the Agency agreed to grant an employment benefit to the grievant(s).

Further, in order to bring final resolution to this matter, the "Agency conditioned" a "settlement agreement" on NTEU, as the Grievants' representative, agreeing not to pursue all issues or factual circumstances raised in the grievance in any forum. At the time the illegal "settlement agreement(s)" were signed by the Defendants-Appellees, after the Plaintiffs-Appellants filed the EEOC Complaint. Each employee had individual rights to pursue Title VII employment discrimination claims when the agency and NTEU refused to go forward with arbitration. NTEU did not appoint an arbitrator, BUT suspended and closed the case.

On April 18, 2001, Administrative Judge, Mona F. Read U.S. Equal Employment Opportunity Commission ruled the class agent identified the discriminatory action of the Agency as being the Agency's "collusion" with the union in settling the mass grievance.. Appellants should have been granted relief pursuant to 29 C.F.R. 1614.501 et. seq by operation of Summary Judgment pursuant to 29 C.F.R. 1614.109(g) issued by U.S. Equal Employment Opportunity Commission final decision. Defendants-Appellees were able to navigate through the U.S. District Court proceeding by misrepresentation and altered evidence; omitting of evidence, facts and law. Defendants'-Appellees' altered the U.S. Equal Employment Opportunity Commission decision by omitting the final decision of April 18, 2001. The Agency and NTEU removed the April 18, 2001 letter that accompanied the decision of U.S. Equal Employment Opportunity Commission finding of discrimination when the filed their response and Motion for Dismissal(s) in District Court. The evidence presented was contrary to the factual evidence and facts of an administrative decision, and relevant to the findings and conclusion of the District Courts Order. The U.S. Equal Employment Opportunity Commission decision, rendered pursuant to 29 C.F.R. 1614.109~), 109(g, or 109(i); the final decision was pursuant to 29 C.F.R. 1614.109(g). The Defendants-Appellee(s) have taking the Appellants through an erroneous process, which took them ~further off course away from their rightful rights and remedy, inflicting severe distress, through intimidation, threats of garnishment of wages and wastes of financial resources that caused damage to their career and reputation.

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I. JURISDICTIONAL STATEMENT

Plaintiffs'-Appellants' complaint was filed in the United States District Court for the Southern District of Texas; de novo. Plaintiffs'-Appellants' are civilian federal employees with the Internal Revenue Service. The complaint was filed against Paul H. O'Neill, Secretary, Department of Treasury and Colleen Kelley, President National Treasury Employees Union (NTEU) and its officials for violations of Federal and Constitutional laws; Title VII of the Civil Rights Act of 1964, amended 1991, et seq. **42 U.S.C. ~2000e-2 (3) (k) (1) (A), et seq; 42 U.S.C. ~2000e-3 (b), et seq; 42 US. C. ~ 2000e-5(b)(g)(1); 42 U.S.C. 2000e et seq; 42 U.S.C. 2000e-16,** et seq. inter alia.

For reasons discussed in this brief, the District Court had jurisdiction over this action pursuant to a final decision by the Equal Employment Opportunity Commission pursuant to **29 C.F.R. ~ 1614.502(a), 29 C.F.R. ~ 1614.503, 28 U.S.C. ~ 1361** and Title VII of the Civil Rights Action of 1964, and amended in 1972 to apply to federal civilian employment complaints of discrimination. Title VII of the Civil Rights Act of 1964, and amended in 1991 to include compensatory damages for intentional discrimination and disparate treatment; and **42 U.S.C ~ 2000e -2(c) et seq; 42 U.S.C. ~2000e- 3 et seq; 42 U.S.C. ~2000e-5 et seq; 42 U.S.C. ~2000e-16, et. seq. 42 U.S.C.~ 2000e-16, (c)(d) et seq. and 28 U.S.C.~ 1361;** inter alia.

This appeal is from a final judgment entered on December 12, 2002. Plaintiffs'-Appellants' filed a timely notice of appeal on December 19, 2002.

The appeals court has jurisdiction over this appeal pursuant to **28 U.S.C. ~1361 et seq; 28 U.S.C. °1291; 28 U.S.C. °1331 and 28 U.S.C. °1391(c);** inter alia.

The plaintiffs'-appellants' have suffered injury-in-fact and show that the interest they seek to protect is arguably within the zone of interest to be protected and regulated by the statutory guarantee in question. They have standing and request a trial de novo.

II. ISSUES FOR REVIEW

The claims for relief are complex. The complexity increased by the incompetence of Plaintiffs' removed representative. Because of the complexity of issues and law, Plaintiffs'-Appellants' request a de novo review and trial.

A. District Court:

1. Whether the District Court erred in allowing the amended "original Complaint" without leave of the court and following the scheduling order.

2. Whether the responsive pleading(s) and motion for dismissal(s) that preceded the "amended complaint" of "Employment discrimination and Breach of Contract Complaint" changed the direction of the "Original Complaint" and court.

3. Whether competent legal representation would have precluded the Memorandum and Recommendation for Dismissal(s) of Colleen Kelley, NTEU and, Paul H. O'Neill, Secretary of Department of Treasury.

4. Whether competent legal representation would have precluded the Motion(s) for Sanctions, Attorney fees and Dismissal(s).

5. Whether the District Court erred when it held that it did not have jurisdiction for the Title VII complaint against NTEU National President Colleen Kelley.

6. Whether the complexity and lack of jurisdiction the results of, incompetence of counsel, and misrepresentation, altered and omitted evidence and demands de novo review and relief from the District Court Order and Judgment under Rule 60(1,), (1), (2), (3) and (6), et seq., and FRAP 10 (a)(2), FRAP 16(1,); inter alia.

7. Whether plaintiffs'-appellants are entitled to execute summary judgment pursuant to **29 C.F.R. 1614.109(g), 29 C.F.R. 1614.501(c), 29 C.F.R. 1614.502 and 503(g) pursuant to 28 U.S.C. 1361** and all other applicable relief, inter alia.

B. Title VII Employment Discrimination - Internal Grievance

1. Whether NTEU collective bargaining agreement promoting victims the right To file Title VII discrimination complaint(s) under the internal grievance process leading to arbitration a deterrent to strip constitutional and legal rights that adversely affects the legal right of the victim to prosecute Title VII discrimination a matter of public policy and public interest.

2. Whether NTEU and the Agency had the legal right to invoke a binding Settlement agreement with prejudice knowing plaintiffs'-appellants' preceded in filing an EEOC complaint of discrimination occurring in the internal grievance process and Title VII issues raised for prosecution under the internal grievance process is a matter of public policy and public interest.

3. Whether plaintiffs'-appellants' had protected rights to proceed with prosecution; of their Title VII discrimination complaint, under the EEOC process, without interference from the Agency and NTEU.

C. The U.S. Equal Employment Opportunity Commission

1. Whether the U.S. Equal Employment Opportunity Commissioner erred in not monitoring relief for the complainants under **29 C.F.R. 1614.501(c)** from a decision of discrimination issued pursuant to **29 C.F.R. 1614.109(b), 109(g) or 109 (i).**

2. Whether the U.S. Equal Employment Opportunity Commissioner erred in not monitoring defendants' - appellees' compliance of a final decision issued pursuant to **29 C.F.R. ~1614.109(g)**.

3. Whether the U.S. Equal Employment Opportunity Commissioner erred in not monitoring compliance and enforcement of the final decision pursuant to **29 C.F.R. 1614.503(g)**, Title VII for judicial review of the agency's refusal to implement relief pursuant to the Administrative Procedure Act **5 U.S.C. 701et seq; 28 U.S.C. 1361**, or to commence de novo proceedings pursuant to the appropriate statutes.

III. STATEMENT OF CASE

A. Issues of Underline Grievance

Beverly Dickerson, Alita Carter, Lydia Sowumni-Cruse, Alexis Powell are African-American female employees, working in the Bankruptcy unit, classified as Bankruptcy Technicians GS-592-5/6/7 pay grade 7. Linda Micheaux-Reed and Vera Robinson are African-American. Rita Galvan, is a Hispanic-American, all females classified as Bankruptcy Specialist GS-1101-7/9, pay grade 9, with over 18 years of civil service with the United States Treasury Department, Internal Revenue Service.

June 7, 1998, and amended August 27, 1998, fourteen (14) minority female employees initiated an internal grievance alleging Title VII employment discrimination violations against the Internal Revenue Service, pursuant to Article 41 of the labor management

collective bargaining grievance process. The aggrieved were clerical and lower level professional employees' of the bankruptcy unit. The total make-up of the lower level employees are twelve African-American females, one (1) Caucasian-American, handicap female, and one (1) Hispanic-American female. The employees were seeking equal opportunity for non-competitive promotions to positions that were upgraded in 1992 and again in 1995, for promoting the bankruptcy clerical and lower level professional employees.[1]

The National Office of Internal Revenue Service upgraded the bankruptcy positions from the dead end bankruptcy clerical GS-592-7 position to a noncompetitive professional level of GS-1101-7/9, with upward mobility to a competitive GS-1101-11/12 bankruptcy specialist, career ladder position.

The agency maliciously conspired to deny promotional opportunities and upward mobility for minority employees, creating a hostile working environment between the minority employees and the non-minority employees', who were the professional wage-earning employees "grade 12". Management adversity to authority, policy and regulations implemented a "local position description" that was not certified or classified for position duties, grade or pay structure or approved by the National Office of the Internal Revenue Service. The Agency's stance purposed on denying the Bankruptcy Unit of minority female employees, the right to progress to their full employment potential equal to their skills, ability with equal pay and training as well as promotional opportunities. [2]

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[1] References to "R.A._____"are to pages in the Record on Appeal.

After coming to an impasse at the third and final step of the internal grievance process, the aggrieved requested invocation of arbitration on the Title VII employment violations in denying promotional opportunities for equal pay.

November 24, 1998 the aggrieved employees received notification from NTEU National Office that the grievance was under the jurisdiction of invocation in binding arbitration. The aggrieved waited over a year and a half for an arbitration hearing to prosecute Title VII violations during the extended time the Agency and NTEU would elude employees inquiries with "waiting for the arbitrator" or "soon". Beverly Dickerson and Vera Robinson made numerous personal telephone and correspondence to Colleen Kelley, President and Michael Grabske, field representative of NTEU, neither responded. The aggrieved tried notifying NTEU of management subjecting employees to hostile working environment of harassment, denial of promotions, reprimands and other violations in retaliation for filing the grievance contemporaneous with the wait for arbitration.

Vera Robinson, Alita Carter, Alex Powell and Rita Galvan notified management, and local NTEU office; they would file and pursue their Title VII grievance under the EEOC process;

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[2] The employees were minorities, holding clerical level or lower level professional Bankruptcy positions; management maliciously replaced a National Position description; adverse to policy, practice and procedures, and Title VII of the Civil Rights act; the Houston district minorities, were being denied promotional opportunities, equal pay and benefits; other district upgraded to allow promotional opportunities, and equal pay for equal work

employment conditions were worse. The case was inactive and NTEU was not forth coming on a hearing date for arbitration or a name of an appointed arbitrator according to the terms and procedures of Article 41 and 43 of the collective bargaining agreement. [3] Mr. Martin Arnold "heatedly" informed four of the aggrieved there would be no arbitration. Within a month, management notified the aggrieved that there was going to be a "mandatory meeting" concerning the grievance.

March 1, 2000 the Agency and NTEU abused its authority and called a "mandatory meeting" on a grievance that should have been under the jurisdiction of an arbitrator. The aggrieved questioned management and the union about having a "mandatory meeting" on issues pending adjudication under the jurisdiction of an arbitrator. Manager, Mr. Martin Arnold, and Mr. Eddie Wariner, NTEU made threats, including threats of demotions and denial of promotions, whenever the aggrieved employees questioned the purpose of the "mandatory meeting" as well as their desire to go to arbitration to adjudicate the Title VII issues of employment discrimination.

Management hurled personal threats and requested a vote as to whether or not we would accept the promotions and would be able to arbitrate the Title VII issues. Personal threats were made to Alita Carter and Beverly Dickerson [4]; "if you don't apply for one (1) of the GS-9 positions you will be demoted" back to the GS-592-7 position.

As it came to pass, both did receive a demotion from GS-9 to GS-7 and back to the GS-9 position to this date." [5] Management and NTEU denied Beverly Dickerson, Alita Carter, Lydia Sowumni-Cruse, Rita Galvan, Alexis Powell, Linda Micheaux-Reed and Vera Robinson; as well as the "other seven (7) aggrieved", their constitutional and statutory rights to prosecute Title VII violations under binding arbitration.

According to policy and procedures, management and NTEU no longer had the authority to negotiate terms or conditions with the employees after the 3rd step of the grievance process and pending arbitration.

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[3] Article 43 of the collective bargaining agreement governing binding arbitration states that if a hearing date for arbitration is not scheduled between the Agency, NTEU attorneys', with the arbitrator, within six months of invoked arbitration the case is, closed by the arbitrator.

[5] The Bankruptcy Specialist positions are GS-1 101-7/9, the aggrieved qualified and were already GS-592-7; they were performing the duties being denied upgrade to the GS-1 101-7/9 because the grade 9 leads to grade 12 higher pay and professional level leading to management of that classification; the clerical GS-592-7 was the final grade and pay classification, dead end position for the bankruptcy unit.

B. The Equal Employment Opportunity Commission

On April 14, 2000, the Plaintiffs-Appellants initiated the "required" "informal EEOC complaint" to prosecute .the Title VII employment violations raised under the grievance process for arbitration, and the unlawful vicious discrimination committed in reprisal for filing the Title VII complaint through the grievance process. The complaint encompassed the fraudulent acts purposed on denying adjudication of employment discrimination under the jurisdiction of arbitration.

Approximately five (5) days after filing the informal EEOC complaint, management called a "non-mandatory meeting" on April 19, 2000; Complainants "did not attend" the meeting, and later learned it was called a "settlement meeting".

Following the "mandatory meeting" of March 1, 2000; Beverly Dickerson, Alita Carter, Rita Galvan, Alexis Powell, Lydia Sowumi-Cruze, Vera Robinson, Linda Micheaux-Reed filed an EEOC complaint; for prosecution of; the Title VII employment discrimination complaint that was filed under the internal grievance process; the claims included obstruction of justice by intentionally and illegally interfering with prosecution of unlawful discrimination.

In the course of the EEOC investigation, James C. Parker, EEOC canceled his interviews with the Agency and NTEU. The agency notified the investigator, there was a "settlement agreement", and the Agency and NTEU had closed the grievance "**December 27, 1999**".

The Agency with malice closed the grievance" one (1) year and one (1) month "after" the case was "purported" invoked in binding arbitration" **"without arbitration" and four (4) months "prior"** to the alleged **"settlement agreement"**. Further, the agency initiated the settlement meeting and agreement five (5) days after the complainants' Initiated their EEOC complaint.

Beverly Dickerson was shown a copy of a "settlement agreement" dated April 19,2000, signed by Michael Salyards, Attorney General Legal Services and Paul Cordova, Director Houston District. An employee stated a copy of the "settlement agreement" was "faxed" to the Union office from the Agency following the "settlement meeting of "April 19, 2000," after she made a personal request to NTEU.

Plaintiffs'- Appellants' later that day approached Ms. Susan Wallace of Labor Relations to find out what was going on Ms. Wallace handed complainants' a copy of another "Settlement Agreement" dated May 8, 9, and 15th, 2000 signed by Mr. Michael Grabske, NTEU field representative, Mr. Michael Salyards, Attorney for General Legal Services and Paul Cordova, Director, of the Houston District.

September 22, 2000, Beverly Dickerson, Alita Carter, Rita Galvan, Alexis Powell, Lydia Sownmi-Cruze, Vera Robinson, Linda Micheaux-Reed received the right to file individual "formal" complaints with U.S. Equal Employment Opportunity Commission. Complainants' filed pursuant to 29 C.F.R. ~1614.106 and 108 against Paul H. O'Neill, Secretary of the Treasury, and NTEU.

Plaintiffs'-Appellants' demonstrated the particular Title VII employment discrimination alleged under the internal grievance

process for arbitration; as well as, the institutionalized discriminatory post harassment, hostile working environment and retaliation suffered, waiting for arbitration; as well as the particular institutionalized discriminatory employment practice of denying minority employees the right to progress to their full working potential. As well as equal pay; equal to their skills and ability. The EEOC complaint also including intentional discrimination and disparate treatment for the purpose of; denying access to prosecute discrimination and discriminatory acts and demotions of Beverly Dickerson, Linda Micheaux-Reed, Alita Carter; lowering of Beverly Dickerson performance appraisal. Official reprimands of Vera Robinson and Beverly Dickerson, in reprisal for initiating a Title VII discrimination complaint first under the internal grievance process and the EEOC process. The two(2) acting contacts; Beverly Dickerson and Alita Carter, are denied promotion in reprisal for the EEOC AND Civil Suit. The complainants became targets of on-going invidious discrimination contemporaneous with the filing of the EEOC complaint.

NTEU and the Agency purposed the language of the "settlement agreement" with malice for the purpose of: stripping away legal and constitutional rights. NTEU and the Agency "fraudulently", with malice, asserted that the settlement agreement was "negotiated" under the "jurisdiction of arbitration" and the issues and facts were "adjudicated". The actions of the Defendants'-Appellees are a matter of public policy and interest.

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6 The Agency and NTEU did not appoint an arbitrator pursuant to policies, practices, and procedures. Title VII grievance never came under the jurisdiction of an Arbitrator, the grievance was never referred for arbitration by NTEU attorneys' or the Agency's attorney according to policy, practice and procedures.

The purported settlement agreement dismissed with prejudice the Title VII issues and facts raised in the grievance for prosecution though arbitration [6] and binding litigation filed before the execution of the **"settlement agreement" [7] in any forum**, including **EEOC. [8]**

The "settlement agreement" purposed a collateral attack on the Title VII issues denying prosecution and relief pursuant to Title VII of the Civil Rights Act.

The Agency raised the defense of a collateral attack in their response to the EEOC complaint, claiming Title VII issues adjudicated; although, the issues were denied adjudication through arbitration.

The U.S. Equal Employment Opportunity Commission administrative judge found the first issues of the complaint to be a "collateral attack" of issue "adjudicated" under the Union and Management Contract. The U.S. Equal Employment Opportunity Commission wrote, "Employees cannot use the EEOC complaint process to lodge a collateral attack on another proceeding" and the 'proper form for a complainant to raise the challenges to actions which occurred during the arbitration proceeding was at that proceeding.

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[7] The Agency and NTEU wrote the "Settlement Agreement" after complainants' initiated the EEOC. The EEOC process was initiated April 14, 2000; the 1st "Settlement Agreement was executed April 19, .2000, and 2nd "settlement agreement" was executed May 8, 9, and 15, 2000.

[8] During investigation, "the EEOC investigator advised the complainants' that they could "also" file a complaint with FLRA for the conduct of NTEU as the union representative.

The U.S. Equal Employment Opportunity Commission, Administrative Judge found pursuant 29 C.F.R. °1614.204(c)(l); the "class had identified the discriminatory action of the agency as being the agency's collusion with the union in settling the mass grievance". Further, "the claims are typical and common with that of the other purported members of the class." [9] The EEOC administrative judge's decision was issued pursuant to **C.F.R. ~1614.109(b)), 109(g) or 109(i)** with the right of the Agency to Appeal the findings of "discrimination" **pursuant to 29 C.F.R. °1614.403.**

The Agency did not appeal the decision of the administrative judge. However, with malice issued a final decision pursuant to 29 C.F.R. ~ I07 and the right to file civil suit.

The Agency denied Plaintiffs'-Appellants' rights to relief for Title VII unlawful discrimination pursuant to 29 C.F.R. ~1614.501 et. seq.

The agency had 40 days to issue a final decision on discrimination or the Administrative Judge's decision would be the final decision pursuant to **29 C. .R. °1614.109(g).**

The agency, with malice, dismissed the EEOC complaint pursuant to **29 C.F.R. 1614.107** "stating" failure to state a claim issuing a right to appeal or file civil action.

"Later", the complainants' discovered, Jerry Armstrong, Department of the Treasury, Regional Complaint Center reviewed the complaint and "independently" "determined" it to be a class complaint. Mr. Armstrong, forward the complaint to Marian Harvey, Office of Equal Opportunity Commission, Treasury; the Director, Marcia H. Coates, Office of Equal Opportunity Program, Department of the Treasury "independently" determined to "forward" the seven (7) individual complaint(s) to the U.S. Equal Employment Opportunity Commission to make a determination on the certification of a class complaint of discrimination.

C. District Court

The Beverly Dickerson, Alita Carter, Lydia Sowumni-Cruze, Rita Galvan, Alexis Powell, Linda Micheaux-Reed and Vera Robinson, through their "former" attorney filed a complaint of discrimination, trial by jury. The complaint changed to Employment Discrimination and Breach of Contract. The compliant was dismissed as a result of, improper responses and filings, failure to comply with applicable rules, filing of incorrect statutes, failure to refer jurisdiction. Plaintiffs? counsel failed to respond to responsive pleadings and to address obvious altered and misrepresentation of material evidence and facts.

IV. STATEMENT OF FACTS

A. District Court

The District Court abused its discretion by admitting testimony and documents the proponent failed to identify and produce while under the legal obligation to do so.

The proper standard for judging attorney performance is that of reasonably effective assistance, considering all the circumstances.

The Federal Rules of Civil procedures, Rule 4(m) requires defendant(s) to be served within 120 days after the filing of the complaint. The Docket reflects that defendant Colleen Kelley CIO Eddie Wariner, NTEU, received the summons October 9, 2001. The District Court requested an answer by December 08, 2001, [R.A.-Summons of Kelley, Ex. 11].

On October 30, 2001, defendant Colleen Kelley filed an unopposed Motion for Postponement of the initial conference scheduled for November 2, 2001 to a date after December 10, 2001. Judge Sim Lake signed an Order on October 31, 2001 for the docket order and scheduling conference for December 7, 2001 at 3:00p.m., informing defendant Kelley to file a certificate of interested parties and responsive pleadings by December 5, 2001, [R.A.-Unopposed Motion of Kelley, Ex.47-48].

December 5, 2001, defendant, Colleen Kelley, filed a Motion to dismiss Plaintiffs' Complaint. There is no order on record granting or denying Defendant's Kelley's Motion to Dismiss, [R.A.-Kelley, Motion to Dismiss, Ex. 70-71].

The record reflect that defendant Colleen Kelley's Motion to Dismiss was filed December 5, 2001, but never ruled upon nor was a responsive pleading filed within the required 10 days.

Defendant Paul H. O'Neill do Mervyn Mosbacker received the summons October 9, 2001. The District Court requested a filed answer due by December 08, 2001, [RA.-Summons, O'Neill, Ex. 13].

There is no order in the record signed by Judge Sim Lake extending the time to file the answer or order or postponing disposition of the motion. The docket reflects that defendant Paul H. O'Neill filed an answer to the plaintiffs "Original Pleading" on December 11, 2001, [R.A.-O'Neill answer to complaint, Ex. 159-162].

Defendant Colleen Kelley filed a motion to dismiss 67 days after the filing of the original complaint, [R.A.-Kelley, Motion to Dismiss, Ex. 69-71]

The District Court allowed the "Original Complaint" to be "changed" 114 days after the scheduling order for Pre-Trial Procedures, approximately 4 months after the defendants' response and motion(s) to dismiss the "Original Complaint", [R.A.-Amended Complaint, Ex. 163-169].

The Original Complaint was changed to "Employment Discrimination and Breach of Contract Complaint" without leave of the court or "written consent" and after responsive pleading(s) and motion(s) to dismiss from the defendants'.

The "Original Complaint" of "Employment Discrimination and Breach of Contract Complaint" encompassed the defendants' defense and responsive pleadings changing the legal and factual issues raised in the "Original Complaint", [R.A.-Original Complaint, Ex. 1-5].

The court terminated and stayed all discoveries, granting a Motion for Protective Order and Denied the Motion for extension of Dispositive Motions, a reflection of plaintiffs' attorney incompetence. [R.A.-Telephonic Status Conference transcript, Ex. Vol.6, page 9-13].

The removal of Plaintiffs' attorney prompted the Plaintiffs' -Appellants to file evidence of material facts to support their "Original Complaint" in defense of defendants' altered and misrepresentation of material facts and evidence given through responsive pleading(s) and motion(s) for dismissal. The Memorandum and Recommendation for summary judgment displays the incompetence of plaintiffs' attorney, [R.A.-Plaintiffs' motions and exhibits, 1289-1358, 1421-1441, 1289-1313, and Order denying defendants' motion for dismissal Ex. 1314-1316.]

B. Grievance.

Defendant Colleen Kelley is President of the National Treasury Employees Union (NTEU), a labor organization authorized by the Department of Treasury and certified as a representative of civil service employees. NTEU engages in employee participation activities; including dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours,

or other terms or conditions of employment, with an aggregate membership of twenty-five or more, is subject to the Title VII Civil Rights Act of 1964, amended 1991,**29 U.S.C.º 2000e (e)(1) et seq.**

The aggrieved were mislead to believe the grievance was under the jurisdiction of an arbitrator for binding arbitration, who had the authority of, scheduling hearing dates, and extensions. As well as grieveability and arbitrability issues, before addressing the merits of the grievance, [R.A.-Grievance, Ex. 1417-1419], [R.A.-Request for Binding Arbitration, Ex. 997-1001] and [R.A.-Letter of Invocation of Arbitration, Ex. 758].

The authority to address grieveability and arbitrability, negotiate conditions and terms of a settlement comes under the jurisdiction of the arbitrator. The "arbitrator" has the "authority" and responsibility of conducting settlement negotiations, [R.A.-1 st Settlement Agreement, Ex. 1416-1417], [R.A.-2nd Settlement Agreement, Ex. 1418-1419].

The NTEU and the **Agency did not appoint an arbitrator, instead,** conducted **negotiations** on **conditions** and **terms** of the grievance after the case was closed, calling a **"mandatory meeting"** and 'settlement meeting" **outside** the **jurisdiction** of an **arbitrator and arbitration.** The aggrieved were misleading over a year to believe the grievance was under the jurisdiction of an arbitrator, [R.A. -Declaration of Michael Salyards, Ex. 1340-1342].

Attorney Michael Salyard's declaration is evidence that the settlement agreement and execution thereof, did not originate from binding arbitration on issues or merits raised in arbitration as "stated" through out the language of the "settlement agreement".

Article 43 of the Collective Bargaining Agreement, "if the employer declares a grievance non-arbitrable or nongrievable the original grievance shall be considered amended to include the issue of non-grievability. Such declaration may be made at any time." The arbitrator has the authority of making all arbitrability and/or grievability determinations, [R.A.-Collective Bargaining Agreement on Arbitration, Ex. 399-404].

The agency and NTEU purposed a collateral attack by fraud and deceit for the purpose of denying prosecution of Title VII unlawful employment discrimination through arbitration and the EEOC process. NTEU and the Agency denied complainants their legal rights as a matter of law, to prosecute and relief of Title VII employment discrimination claims alleged under the internal grievance process. [R.A.-Settlement Agreements, Ex. 1194 and 1195], and [R.A.-Agency response to EEOC complaint, Ex. 1348-1354].

The Agency and NTEU illegally interfered with the statutory rights of the complainants to participate and adjudicate Title VII employment discrimination claims, with intent. The agency and NTEU were aware that the complainants had the right to, and authority to, file a complaint through the EEOC; and to prosecute the issues raised pursuant to **Title 5 U.S.C. ~ 71212(d) and 29 C.F.R.~ 1614 401** after, the agency and NTEU suspended and refused arbitration to prosecute Title VII employment discrimination.

The Defendants'-Appellees' are intentionally depriving the prosecution of Title VII employment discrimination as well as unlawful discrimination violation claims. Intentionally depriving governmental law enforcement activities of important testimony and evidence needed to determine whether a violation of employment discrimination occurred, ultimately fostering a hostile working environment of harassment, retaliation, reprisal, and other Title VII violations thus creating an atmosphere of future violations of the law, [R.A. -Affidavits of Complainants, Ex. 801-884], [R.A. -Ex. 1194, 1195 and 1340-1342].

Defendants' -Appellees' intentional discrimination in denying Plaintiffs'-Appellants' a forum to litigate the underline Title VII employment discrimination and relief; although, the finding of discrimination by the U.S. Equal Employment Opportunity Commission. Defendants-Appellees are violating the constitutional and legal rights of the victims of discrimination; and placing the protected fights of Beverly Dickerson, Alita Carter, Lydia Sowunmi-Cruze, Rita Galvan, Alexis Powell, Linda Micheaux-Reed and Vera Robinson in jeopardy for future injury.

Interference with Title VII protected rights are contrary to public policy, and the anti-retaliation provisions of the civil rights statutes prohibit such conduct.

C. The Equal Employment Opportunity Commission

The Plaintiffs'-Appellants' filed a complaint against the Agency and NTEU for their participation in denying prosecution of Title VII employment discrimination claims through arbitration. The Agency and NTEU subjected employees to harassment, demotions, denials of promotions, threats, a working environment of hostility in reprisal for pursuit of justice and relief; inter alia.

The Order dismissing Plaintiffs' complaint for lack of jurisdiction was in err. The complainants exhausted their administrative remedies. The defendants' were not aware that a summary judgment was issued by the U.S. Equal Employment Opportunity Commission pursuant to **29 C.F.R.~ 1614.109(g),** [{New Evidence} - Letter dated April 18, 2001, U.S. Equal Employment Opportunity Commission, Mona F. Read, Lead Administrative Judge, exhibit to Appellants' response to appellee's Colleen Kelley's Motion for Summary Affirmance].

The issue of a collateral attack of the underline issues of employment discrimination is mootable. The purpose of the settlement agreement is obvious, The Plaintiffs'-Appellants' had the right to file a complaint under the EEOC once the agency had closed the case or once the Agency and NTEU admitted there would be no arbitration. The actions of the Agency and NTEU handling the internal grievance process met all the conditions for complainants to pursue prosecution of employment discrimination pursuant to **5 U.S.C.~ 7121.2(d), 29 C.F.R.~ 1614401(d) and 29 C.F.R.°1614106.** The Agency and NTEU used the only alternative left to stop the rights of the victims to prosecute discrimination violations. The defendants'-appellees' invoked an illegal "settlement agreement" for the purpose of a collateral attack on all future administrative and judicial forums. [R.A.-Agency's response to EEOC, Ex. 1348-1354] and [R.A.-Settlement Agreement, Ex. 1194 and 1195].

The seven (7) complainants initially filed a class compliant under the initial EEOC pre-complaint processing. However, following counseling and the investigation process the complainant(s) were given the right to file individual complaints

pursuant to **29 U.S.C. ~1614.196** "or" class complaints' pursuant to **29 U.S. C.°1614.204**. The complainant(s) chose to file individual complaint(s) of discrimination at the 'formal" stage of the EEOC process. [RA-Complainants' individual complaints, Ex. 1315-1415].

The agency independently chose "adverse to policy and procedures" to forward the complaint(s) for class certification, although the complainants chose to file individual complaints of discrimination. [R.A.-Agency's request for class certification, Ex. 1356-1358].

The U.S. Equal Employment Opportunity Commission findings of discrimination pursuant to **29 C.F.R. ~1614.204(c)(1)** resolved the claims of intentional discrimination and disparate treatment against the Defendants'-Appellees'. [R.A.-EEOC findings Ex. 647-658].

Pursuant to **Title VII of the Civil Rights Acts of 1964 ~ 2000e-2 (1) (A)**, the plaintiffs'-appellants' demonstrated and resolved the issue of unlawful Title VII discrimination within the scope of litigation and judgment as well as final decision under the constitution and federal civil rights laws.

The Agency and NTEU covered up and denied Plaintiffs'-Appellants' relief from the U.S. Equal Employment Opportunity Commission, Administrative Judge's final decision pursuant to **C.F.R. ~ 1614.109(g)**. [U.S.. Equal Employment Opportunity Commission, Administrative Judge letter dated April 18, 2001, submitted by Appellants' in response to Colleen Kelley, Motion for Summary Affirmance].

The complaints included Title VII violations committed by NTEU and the Agency for the purpose of; denying prosecution of Title VII issues. The "Agency" forwarded the complaint(s) requesting class certification, (emphasis on Agency).

The agency waived their right to appeal through malfeasance and noncompliance of the U.S. Equal Employment Opportunity Commission findings and decision pursuant to **29 C.F.R. ~ 1614.109(g)**. The Agency dismissed and misled the complainants', further denying appellants' relief pursuant to **29 C.F.R. ~1614.110** and **501**, pursuant to Title VII of the Civil Rights Act of 1964, amended 1991, [R.A.-Agency decision, Ex. 1348-1354].

The Agency addressed the U.S. Equal Employment Opportunity Commission decision with contempt dismissing the complainants' complaint pursuant to **29 C.F.R. ~1614.107** as full relief without addressing the findings of discrimination or relief pursuant to **29 C.F.R.~ 1614.501**; or appealing the findings of discrimination pursuant to **29 C.F.R.~ 1614.403**. The U.S. Equal Employment Opportunity Commission did not monitor the case for relief of discrimination pursuant to **29 C.F.R. ~ 1614.503(g).**

V. ARGUMENT

A. District Court

The Sixth Amendment right to counsel is the right to effective assistance of counsel. The benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the process that the trial cannot be relied on as having produced a just result. The proper standard for judging an attorney's performance is that of reasonably effective assistance, considering all the circumstances. With regard to the required showing of prejudice, the proper standard requires the showing that there is a reasonable probability that but for counsel's unprofessional errors, the result of the proceeding would have been different.

The Defendants' were in default and violation of Federal Rules of Civil Procedures 4(m), 12(4), (A) (B), when the court allowed the amended complaint without leave of the court. Federal Rules of Civil Procedures states, "if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 10 days after notice of the court's action; or, if the court grants a motion for a more definite statement."

The responsive pleading shall be served within 10 days after the service of the more definite statement. Rule 12 (a) (1,) of Rules of Civil Procedures requires that a defendant shall serve his answer to the complaint within 20 days after the service; or 60 days when the United States or an officer or agency thereof shall serve an answer or motion for lack of jurisdiction.

Following the removal of plaintiffs' attorney, plaintiffs' were able to avoid Summary Judgment, although not in time to avoid the Memorandum and Recommendation for Dismissal and Judgment, dismissing their Title VII discrimination complaint.

Defendants-Appellees were able to navigate through the U.S. District Court proceeding by misrepresentation and, altered evidence, omitted evidence.

Defendants'-Appellees' altered the U.S. Equal Employment Opportunity Commission decision by omitting the final decision of April 18, 2001. The Agency and NTEU removed the April 18, 2001 letter that accompanied the decision of U.S. Equal Employment Opportunity Commission finding of discrimination when the filed their response and Motion for Dismissal(s) in District Court.

The evidence presented was contrary to the factual evidence and facts of an administrative decision, and relevant to the findings and conclusion of the District Courts Order. The U.S. Equal Employment Opportunity Commission decision, rendered pursuant to 29 C.F.R. 1614.109(b), 109(g) or 109(i); the final decision was pursuant to 29 C.F.R. 1614.109(g). "If the agency does not issue a final decision within 40 days, then my findings and conclusions, along with any relief, will become the final decision pursuant to **29 C.F.R. ~1614.109(g)".** [R.A. U.S. EEOC findings- Ex.. 647-658] and [R.E. Ex. 23, not included in records of appeal].

The Order as well as the Memorandum and Recommendation by the Magistrate Judge, was decided on uncontested, responsive pleadings.

The U.S. Equal Employment Opportunity Commission finding and final decision of discrimination was not addressed in Plaintiffs complaint or defendants' responsive pleadings, the U.S. Equal Employment Opportunity Commission finding the Agency to be in collusion with NTEU was not addressed in the complaint or responsive pleadings. The Agency's 40 days to file an appeal and/or provide relief pursuant to the plaintiffs' complaint of intentional discrimination and disparate treatment; the agency dismissal of the Title VII complaint adverse to the EEOC findings; the fact that the "Defendant" filed the EEOC complaints requesting class certification was adverse to regulations and law.

B. Grievance

An employer or labor organization may not interfere with the protected right of an employee to file a charge, testify, assist, or participate in any manner of investigation, hearing or proceeding under Title VII of the Civil Rights Act of 1964. Protected rights are non-waivable under the federal civil rights {Title VII}, **42 US. C. ~2000e et seq., and the Equal Pay Act, 29 U.S.C. ~ 206(d)**. The agency and NTEU intentionally violated those rights.

The Plaintiffs'-Appellants' had a non-waivable right to file charges with the EEOC. **See Gilmer V. Interstate/Johnson Lane Corp., 500 US. 20, 28 (1991); EEOC v. Cosmair, Inc., 821 F.2d at 1090; EEOC v. US. Steel Corp., 671 F. Supp. At 357-59.**

Id Mr. Michael Salyards. **EEOC v. Board of Governors, 957 F. 2d 424 (7th Cir);McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973); Wayne Goddard v. Nicholas F. Brady, Secretary of the Treasury, EEOC Request No.05910124 (1991), citing Furnco Construction Corp. V. Waters, 438 U.S. 567,576 (1978).**

Suddenly, management purposed a "mandatory meeting" forcefully with malfeasance, offering 14 positions and denying prosecution of the Title VII issues, ex post facto. The Plaintiffs'-Appellants' are being denied relief for the subsequent Title VII violations and contemporaneous Title VII violations. **Hochstadt v. Worcester Found. for Experimental Biology, 425 F. Supp. 318 (D. Mass), aff'd, 545 F.2d 222 (1st Cir. 1976); Veprinsky v. Fluor Daniel, Inc., 87 F. 3d 881, 889 (7th Cir. 1996); EEOC v. Pacific Pres Pub. Assn, 676 F. 2d 1272, 1281 (9th Cir. 1982); Garcia V. Lawn; 805 F.2d 1400, 1405 (9th Cir. 1986).**

Defendants'-Appellees' purposed a "settlement agreement" that stripped the rights of Plaintiffs'-Appellants'. A de novo review can challenge the legitimacy of the illegal "settlement agreement" that was invoked to deny the legal rights set forth under the constitution, **Rogers v. General Electric Co. 781 F. 2d 452 (5th Cir. 1986) citing United States v. Alleghany-Ludlum Industries, Inc. 51 7F.2d 826, 835 (5th Cir. 1975). Carey v. United States Postal Service, 812F.2d 621, 624-25 (10th Cir. 1987). Finch v. Postmaster General, 05880030,2046/G6 (1988);supporting law: Fielden v. Tennessee Valley Authority, 01 832 024,1081/E11 (1983). McLendon Wilson v. Clarence Thomas, Chairman Equal Employment Opportunity Commission, EEOC Appeal No. 01881684 (October 13, 1989); Rogers v. General Electric Co. 781 F. 2d 452 (5th Cir. 1986) citing United States v. Carey v. United States Postal Service, 812F.2d 621, 624-25 (10th Cir. 1987).**

Congress has explicitly decided that a conflict between the rights of identifiable victims of discrimination and the interests of the bargaining unit must be resolved in favor of the former. **NTEU v. FLRA 774 F 2nd1181 (1995). Title VII of the Civil Rights Act of 1964, 42 U.S.C. ~ 2000e et seq.**, provides that the right of an aggrieved employee to complete relief takes priority over the general interests of the bargaining unit. See **Franks v. Bowman Transp,. Co., 424 US. 747, 96 S.Ct 1251, 47L.Ed.2d 444 (1976). Reiterated in a decision in the 9th US. Circuit Court of Appeals - 436th Airlift Wing, Dover Air Force Base and FLRA, 01-1371, 103 LRP 2316.**

Federal courts have the authority to hear plaintiffs'-appellants' case of controversies rising from legal and constitutional rights that challenge the actions taken by a federal agency and diversity of jurisdiction. The U.S. Supreme Court has ruled, "that a Union's actions are arbitrary only if; in light of the factual and legal landscape at the time of the Unions actions, the Union's behavior is so far outside a wide range of reasonableness" as to be irrational. **Air Line Pilots Association, International v. O'Neill, 111 S. Ct. 1127(1991), quoting Ford Motor Co. v. Huffman, 345 US. 330 (1953).**

The Agency interfered with the rights to file individual complaints under the EEOC process pursuant to **29 CFR ° 1614.106**, when it forwarded the complaint(s) for class certification, anticipating the denial of certification. Agreements that prevent employees from cooperating with EEOC during enforcement proceedings and interfering with enforcement activities deprived the Commission of important testimony and evidence needed to determine whether a violation has occurred.

Furthermore, insofar as such agreements make it more difficult for the Commission to prosecute past violations. An atmosphere was created fostering future violations of the law. See **Brooklyn Savings Bank V. O'Neil, 324 U.S. 697, 710 (1945); EEOC v. Astra USA, Inc., 94 F. 3d, 738, 742 (1st Cir. 1996).**

The intangible injuries encompass intimidation, anxiety, severe stress, mental anguish, emotional pain & suffering as well as loss of enjoyment of life. See **Burlington Industries, Inc. V. Ellerth, No.97-569, US. Supreme Court (6/26/98).**

NTEU, can be held liable for the illegal conduct of its representatives if the conduct creates a hostile work environment, even though the conduct does not result in a tangible employment action.

C. Equal Employment Opportunity Commission

The U.S. Equal Employment Opportunity Commission found that the Agency conspired with NTEU to discriminate against the employees. Pursuant to a final decision **29 CFR~ 1614.109(g)**, Plaintiffs'-Appellants' are entitled to relief by operation of Summary Judgment, **29 CFR ~ 1614. 501 (a); 29~CFR ~1613, App~A 29 C. F.R. ~1614.502 and 503, 28 U.S. C. ~ 1361** relief must be provided.

Turning to the "settlement agreement" and the underline issues in controversy "clearly if victims of employment discrimination are unable to approach the EEOC through the internal grievance or the EEOC process, the investigative powers that Congress conferred would be sharply curtailed and the efficacy of investigations would be severely hampered. Congress reaffirmed the public policy against interference with EEOC enforcement efforts, including the right to file a charge. Congress enacted provisions barring retaliation in each of the statutes enforced by the Commission in large part to ensure that employees remain free to report suspected violations to the government.

VI. ARGUMENT

CONCLUSION

Facially neutral employment rules, practices, policies or procedures which have significant adverse effects upon members of a statutorily protected group, or which otherwise caused members of a protected group to be "denied access" to equal employment opportunities are unlawful. **Connecticut v. Teal, 457 US. 568 (1982; international Brotherhood Ward Cove Packing Co. v. Antonio, 109 S. Ct 2115 (1989); Watson v. Forth Worth Bank and Trust, 108 S. Ct. 2777(1988).**

The preponderance of the evidence in this case proves that the agency and NTEU's explanation in settling the mass grievance is a "pretext" for discrimination." **Texas Department of Community Affairs v. Burdine, 450 US. 248, 256 (1981); Holley v. Department of Veterans Affairs, EEOC request no.05950842 (November 13, 1997); Pavelka v. Department of the Navy, EEOC request no.05950351 (December 14, 1995).**

The Plaintiffs'-Appellants' are entitled to prosecute their Title VII employment discrimination claims; and relief for unlawful discrimination as cited in brief.

In determining whether conduct is arbitrary, the U.S. Supreme Court has ruled that a Union's action are arbitrary only if in light of the factual and legal landscape at the time of the Union's actions the Union's behavior is so far outside a "wide range of reasonableness", as to be irrational.

The Civil Rights Act of 1991 authorized awards of compensatory damages against the federal government under Title VII involving discrimination, in Cases of a respondent who has more than 500 employees in each of 20 or more calendar weeks in the current or preceding calendar year, $300,000.00.

Congress added compensatory damages to federal EEOC statues in order to make the "Perpetrators" of employment discrimination liable for non-wage economic consequences of their acts, to the extent necessary to provide full relief.

Appellants, were denied promotional opportunities for a long period of time that continues. Some plaintiffs-appellants demoted, all were denied retroactive promotions and within grade increases. Lydia Sowumni-Cruze, Alita Carter and Beverly Dickerson denied promotional opportunities when applying for positions qualified for, (Beverly Dickerson, and Alita Carter) were **acting agents / spokespersons in filing the EEOC complaint.**

Awards of back pay in Title VII cases are governed by **5 CFR ~ 550.801 et. seq. See 29 CFR ~ 1614.501 (b)-(c). 5 CFR ~ 550-804(a)** provides: When an appropriate Authority has determined that Plaintiffs-Appellants were affected by an unjustified or unwarranted personnel action, the employees are entitled to back pay under **~ 5596 of Title 5, United States Code**. The employees are entitled to Incremental increases, retroactive promotions and differentials they would have received (if not for the prohibited discrimination) as well as any overtime. **Taylor V. Tennessee Valley Authority, 01832701, 1238M10 (1984).** Plaintiffs'-Appellants' are entitled to individual punitive damages in the amount of $2,000,000.00 with interest, reimbursement for attorney fees, compensation for economic and non-economic damages, and award Appellants' such other and further relief as this court deems appropriate. See **Baker II, 922 F.Supp at 1305-06b** Wrote: Punitive damages Appropriate in case of callous disregard for a Plaintiff's rights. **Smith v. Wade, 461 US. 30, 51, 103 £Ct 1625, 1637, 75 L.Ed.2d 632 (1983) cited in U.S. v. Balistrieri; 981 F.2d 916, 936 (7th Cir. 1992).**

EXHIBIT 2

9100 Fondren #132
Houston, TX 77074
June 24,2003

Employment Standards Administration
Office OF Labor-Management Standards
Assistant Secretary, Victoria A. Lipnic
200 Constitution Avenue, N.W. Room 52321
Washington, D.C. 20210

Subject: Request For Review - Complaint of Vera Robinson V. NTEU and NTEU Chapter 222 of Houston, Texas.

Ms. Lipnic:

I request a review of the above-mentioned decision for the following reasons:

On January 31, 2003, at 2:00 p.m., I was interviewed by Jolyn Underwood, an OLMS representative in Houston. The interview was "not" extensive, in fact, it last about 30 to 45 minutes. Since that time I have not had any more meetings with her, however, I would provide documents to her regarding our litigation involving NTEU. The documents were filed either in District Court or the Court of Appeals.

At the time the above-mentioned case was filed, we were still members of the Union and dues were still being deducted from our payroll. I submitted a copy of my leave and earnings statement to Jolyn Underwood, OLMS Representative, which will support this statement and should be apart of the record.

Also, the incidents alleged in this complaint all occurred during our tenure as union members and before this complaint was filed.

You stated that the Bill of Rights does not entitle a union member to personal use of employer equipment. I would like the record to reflect that at the request of the NTEU Field Representative, Beverly Dickerson and I used our employer equipment to provide the "reports" the Union needed to prove during arbitration that we were performing higher graded work. It had "never" been a problem in the past, to pull these same reports, however, because we had filed the grievance and it was pending arbitration, it became an issue with management officials. As a result, the Agency Attorney, informed the NTEU Filed Representative, that it was "his" "responsibility" to request the documents through "him" because the case was now pending arbitration.

I would also like the record to reflect that I was given permission, by NTEU Chapter 222 President, to use the Union fax machine any time I wanted to. In using the fax machine, I would always ensure that a union representative was in the union office at the time. I would also give a copy of the documents I faxed to the union office before I left their office. For over a year and one-half, I faxed letters to NTEU Field Representative, and National NTEU President, Colleen Kelley, inquiring as to when the date of arbitration would take place. However, we "never" received a response. Instead, once the NTEU Chapter 222 President was informed that we had filed a lawsuit against NTEU and the Agency in District Court, I became the subject of a TIGTA investigation regarding using the fax machine for personal use.

For which I was not "aware" of. I was also at that time informed by the NTEU Chapter 222 President, that he had talked to the NTEU Field Representative and was told to tell me that I could no longer use the NTEU Union's fax machine.

I later received a clearance letter from management officials that no action would be taken against me regarding using the fax machine. My Manager, CeCelia Huffmes, informed me at that time, that Management "did not" "initiate" the TIGTA investigation against me.

You stated that the Bill of Rights sections of the CSRA regulations protects the right of a union member to sue, it does not limit the right of the union to defend itself or take other action permitted in legal proceedings brought against it. I would like the record to reflect that the legal documents submitted to Jolyn Underwood, OLMS Representative, clearly reflect that the union have attempted in every way possible to prevent our case from due process per the law.

A Declaration from the Agency's Attorney, clearly stated that NTEU "recognizing the costs and hazards of proceeding to litigation on both the failure to prosecute issues and the merits, NTEU agreed to withdraw its claims regarding the merits in exchange for the Agency's agreement to grant an employment benefit to the grievants." The record clearly reflect that the illegal settlement agreement "collaborated" between the Agency and NTEU against us, "further agreed not to pursue all issues or factual circumstances raised in the grievance in "any forum."

The "law" says the following: "Suspending or limiting access to an internal grievance procedure constitutes an "adverse action." In the case of EEOC v. Board of Governors 957 F.2d 424 (7 Cir.), of State College & Universities/29, a university's collective bargaining agreement provided for a specific internal grievance procedure leading to arbitration.

The agreement further provided that this procedure could be terminated if the employee sought resolution in any other forum, such as the EEOC. The Seventh Circuit rule that termination of the grievance process constituted an adverse employment action in violation of the anti-retaliation clause.

I Would like the record to reflect that we relied upon NTEU to fairly adjudicate our complaint. But instead, closed the case and mislead us to believe that the case was in arbitration. The record clearly reflects that NTEU filed Summary Affirmance in the Appeals Court to keep the case from being heard. The Record clearly reflects that NTEU filed a Motion to Strike our Brief. The record clearly reflect that since this case has been filed in federal court and now pending a decision before the Appeal's Court, our fight have been against NTEU. The Agency did not oppose our Appeal; the Agency did not join in with NTEU's Motion to Strike our Brief. The Agency did not file sanctions against our Attorney nor $97,OOO.OO, worth of attorney fees against us. But instead, it was NTEU, who was supposed to represent us in good faith. It was NTEU for which we have paid union dues throughout the years that misrepresented us. We are the one that was not "protected" by the very organization that should have protected our rights. But instead, manipulated our rights and then attempted to force us to accept their illegal manipulation.

The record clearly reflect through NTEU's filing of sanctions, that our Attorney, Carabeth Luckey, was "threaten" off our case and the Judge removed her after she "exemplified" incompetence.

The record reflect that as a result, we were left as Pro Se with no prior legal experience, survived, Two Motions for Dismissal filed by NTEU, Summary Judgment, Summary Affirmance and Motion To Strike Brief.

At the time that I met with Jolyn Underwood, our case had been dismissed out of Federal District Court and we had filed an Appeal. The record had not at the time been sent to the Court of Appeals. Jolyn and I discussed our being given the opportunity to litigate our case before an administrative judge.

Again, I request a "thorough" review of this decision.

Sincerely Yours,
s/Vera Robinson

Cc: Pat Wynns via Gary Lester
Jolyn Underwood